

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

DAVID MOHNEY, et al.,

Plaintiffs,

-against-

SHELLY'S PRIME STEAK, STONE CRAB &
OYSTER BAR a/k/a SHELLY'S NEW YORK
a/k/a SHELLY'S NEW YORK STEAKHOUSE
AND OYSTER BAR, et al.,

Defendants.

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DATE FILED: SEP 19 2008

06 Civ. 4270 (PAC)(RLE)

CORRECTED
STIPULATION AND
ORDER
REGARDING
SETTLEMENT PROCESS

WHEREAS, the Parties have been attempting to reach a negotiated resolution to this matter since late 2006;

WHEREAS, the Parties participated in formal non-binding private mediation sessions on January 8, 2007, April 9, 2007, July 23, 2007, July 24, 2007, December 3, 2007, December 4, 2007, January 23, 2008, and April 25, 2008, all of which were conducted by Carol Wittenberg ("Ms. Wittenberg") of JAMS; and

WHEREAS, the Court held settlement conferences in which the parties participated on March 13, 2008, July 14, 2008, and August 7, 2008; and

WHEREAS, as a result of these efforts, the parties have agreed to all material terms of a negotiated resolution to this matter but have reached an impasse on several issues;

IT IS HEREBY STIPULATED AND AGREED, in consideration of the mutual covenants and promises set forth in this Agreement, by and between all parties by their undersigned counsel, that:

1. In drafting the final Stipulation of Settlement and Release, the parties will incorporate all terms of the last draft Joint Stipulation of Settlement and Release Plaintiffs sent to Defendants, aside from the issues listed in paragraphs 2 through 5 herein, which the parties have agreed to resolve as described below.

2. Issue #1: Class Period. The end of the class period for purposes of membership in the settlement class will be April 1, 2007.
3. Issue #2: Class Release. The class release will extend through December 1, 2007.
4. Issue #3: Confidentiality. In order to receive a settlement check, each class member must agree to keep the amount of their settlement award confidential and agree not to talk to the media about the terms of the settlement agreement.
5. Issue #4: Payment Schedule and Related. The payment schedule, the security for the payments, the interest rates, and the start date for interest payments will be determined by Ms. Wittenberg on confidential written submissions and one private conversation with each party. The parties agree that Ms. Wittenberg's ruling on these issues will be binding and will become a term of the final Stipulation of Settlement and Release. The parties agree to make these submissions to Ms. Wittenberg by September 12, 2008. The parties' respective positions that they will submit to Ms. Wittenberg are set forth in the Excel spreadsheet Plaintiffs sent to Defendants on September 6, 2008.

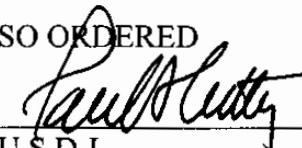
By: /s/ Justin M. Swartz
Justin M. Swartz

OUTTEN & GOLDEN LLP
3 Park Avenue, 29th Floor
New York, NY 10016

Attorneys for Plaintiffs
Dated: September 17, 2008

By: /s/ Arch Y. Stokes
Arch Y. Stokes

SHEA STOKES ROBERTS & WAGNER,
ALC
3593 Hemphill Street
College Park, GA 30337
Attorneys for Defendants
Dated: September 17, 2008

Dated: New York, New York <u>September 14</u> , 2008	SO ORDERED  U.S.D.J.
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